

# ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT AGREEMENT IN THE LITTLE COLORADO RIVER BASIN TABLE OF CONTENTS

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## ATTACHMENTS:

Exhibit 2.1 .....	Legislation
Exhibit 2.10 .....	Eastern LCR Basin (Norviel Decree Area)
Exhibit 2.48 .....	Zuni Protection Area Zuni Pumping Lands
Exhibit 4.1.A(1) <i>et seq.</i> .....	Zuni Abstracts
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## **ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT AGREEMENT IN THE LITTLE COLORADO RIVER BASIN**

THIS SETTLEMENT AGREEMENT dated as of June 7, 2002, is entered into by the Zuni Indian Tribe on behalf of itself and its members; the United States of America on behalf of the Zuni Indian Tribe and its members; the State of Arizona; the Arizona Game and Fish Commission; the Arizona State Land Department; the Arizona State Parks Board; the St. Johns Irrigation and Ditch Co.; the Lyman Water Co.; the Round Valley Water Users' Association; the Salt River Project Agricultural Improvement and Power District; the Tucson Electric Power Company; the City of St. Johns; the Town of Eagar; and the Town of Springerville. When enforceable, this Settlement Agreement resolves the water rights claims of the Zuni Indian Tribe, its members, and the United States on their behalf in the Little Colorado River basin in Arizona.

### **ARTICLE 1 – RECITALS**

1.1 The continued development of the Little Colorado River basin, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by unresolved litigation regarding water rights based upon federal, state, and other law. These include claims by the Zuni Indian Tribe and its members to a tribal water right sufficient to maintain the Zuni Heaven Reservation for long-standing religious and sustenance activities, as recognized and protected by Congress in Pub. L. No. 98-498, Conveyance of Lands to the Zuni Indian Tribe, 98 Stat. 1533 (August 28, 1984), as amended by Pub. L. No. 101-486, 104 Stat. 1174 (Oct. 31, 1990). In addition, the validity of certain non-Indian claims to water and the liability of other water users and the United States to the Zuni Indian Tribe have been raised. These issues are the subject of extensive and complex litigation pending in the Arizona state courts.

1.2 It is acknowledged by all of the Parties that the resolution of these conflicts must recognize vested water rights arising under federal law, state law, the Norviel Decree, and through contractual relationships with St. Johns Irrigation & Ditch Co., Lyman Water Co., and Round Valley Water Users' Association.

1.3 The Parties have agreed to permanently settle the water rights of the Zuni Tribe in the Little Colorado River basin in Arizona, to finally resolve pending litigation on water rights and damage claims, and to seek funding for the implementation of the Settlement Agreement.

1.4 The Parties agree to cooperate in good faith at all times from and after the day this Settlement Agreement is executed to facilitate the successful completion of all conditions precedent to make this Settlement Agreement enforceable. In addition, the Parties agree to seek State legislation allowing for the severance and transfer of surface water rights to the Zuni Tribe for the purposes set forth in this Settlement Agreement.

1.5 It is the policy of the United States, in keeping with its trust responsibility to Indian tribes, to promote Indian self-determination, religious freedom, political integrity, and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

1.6 The objective of this Settlement Agreement is to resolve all outstanding water-related litigation and to settle, once and forever, the water rights of the Zuni Tribe to surface water

and underground water within the Little Colorado River basin in the state of Arizona based upon federal, state, and other laws by providing to the Zuni Tribe sufficient water from various sources to satisfy the purposes of the 1984 Act, as amended, establishing the Zuni Heaven Reservation.

1.7 The Zuni Tribe intends to reestablish and maintain the wetland environment that previously existed within its Zuni Heaven Reservation, Kolhu/wala:wa, including restoration of water to its Sacred Lake, Hadin Kyaya. The restoration project will include aggradation of the Little Colorado River, enhancement of river flows, and reintroduction and maintenance of native animal and plant species essential for religious and sustenance activities. To accomplish these wetland restoration goals, the Zuni Tribe will use a minimum of 5,500 acre-feet of water per annum. The sources of water to be used to accomplish the settlement goals include the appropriation of unappropriated surface water flows reaching the Zuni Heaven Reservation, water from Zuni Lands upstream of the Zuni Heaven Reservation, acquired surface water rights, and underground water. Pursuant to this Settlement Agreement and with the cooperation of the Parties, the Zuni Tribe will acquire rights to 3,600 acre-feet per annum of surface water and will waive its water rights claims when it has acquired rights to 2,350 acre-feet per annum of surface water. The Zuni Tribe will also have a right to use up to 1,500 acre-feet per annum of underground water from the Zuni Pumping Lands for its restoration activities at the Zuni Heaven Reservation and to provide water for the Sacred Lake.

1.8 It is the objective of the Parties to provide for the Zuni Tribe's acquisition of surface water on a voluntary basis so that the wetland restoration goals for the Zuni Heaven Reservation will be met without disrupting existing surface water or underground water use by other water users within the Little Colorado River basin in Arizona.

NOW, THEREFORE, in consideration of the promises and agreements hereinafter set forth, the Parties agree as follows:

## ARTICLE 2 - DEFINITIONS

This Settlement Agreement employs abbreviated terms that have the following meanings:

- 2.1 "Act" means, unless otherwise indicated, legislation by Congress that authorizes federal action required to carry out this Settlement Agreement in the form of Exhibit 2.1.
- 2.2 "AFA" means acre-foot per annum.
- 2.3 "AGAF" means Arizona Game and Fish Department or Commission, or both.
- 2.4 "ASLD" means the Arizona State Land Department.
- 2.5 "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq*, as it now exists or as it may be amended.
- 2.6 "Deadline" means December 31, 2004, unless and until the Parties jointly agree in writing to another Deadline.

- 2.7 “Decree Court” means the court with jurisdiction over the judgment and decree entered in accordance with this Settlement Agreement.
- 2.8 “*de minimis* use” means a surface water use for domestic purposes not to exceed one acre-foot per annum, for stockwatering uses or wildlife uses, or a pond having a capacity of not more than 15 acre-feet that is used primarily for watering livestock or wildlife.
- 2.9 “DWR” means the Arizona Department of Water Resources.
- 2.10 “Eastern LCR” means the portion of the LCR basin in Arizona upstream of the confluence of Silver Creek and the LCR, as identified on Exhibit 2.10.
- 2.11 “Eastern LCR Decree” means that portion of the decree entered in the LCR Adjudication that includes water rights in the Eastern LCR.
- 2.12 “Effective Date” means the date on which all of the Parties except the United States have executed the Settlement Agreement and any exhibits that call for their signatures.
- 2.13 “Enforcement Date” means the date on which all of the actions described in Article 3 have been completed.
- 2.14 “exempt well” means a well having a pumping capacity of 35 gpm or less. For purposes of determining whether a well is exempt, a series of wells serving the same Facility shall be counted as a single well.
- 2.15 “existing” means, when referring to a water use, that the use began before or on the Enforcement Date. When referring to a well, “existing” means that the well is completed before or on the Enforcement Date or drilling of the well commenced before or on the Enforcement Date and the well is completed within the time authorized by its permit. A replacement well is also considered an existing well if it does not exceed the capacity of the existing well it is replacing. When referring to a decree, “existing” means the decree was entered before or on the Enforcement Date.
- 2.16 “Facility” as used in the definition of “exempt well” and “well” means all buildings, equipment, structures and lands served by a common water conveyance system, which buildings, equipment, structures, lands and common water conveyance system are owned and operated by or under common control of the same person, persons, or entity and are located on a single site or on contiguous or adjacent sites, and are operated as a single complex with water used primarily for one purpose.
- 2.17 “Fund” means the fund described in paragraph 7.1 of this Settlement Agreement and in section 6 of Exhibit 2.1.

- 2.18 “groundwater” means all water beneath the surface of the earth other than surface water and other than recharged water subject to recovery under state law.
- 2.19 “Hazardous Substance” means those substances included within the definition of that term under 42 U.S.C. § 9601(14), as it now exists or as it may be amended.
- 2.19.A “Judgment and Decree” means Exhibit 11.9.
- 2.20 “LCR” means the Little Colorado River and its tributaries in Arizona.
- 2.21 “LCR Adjudication” refers to *In Re: The General Adjudication of All Rights to Use Water in the Little Colorado River System and Source*, Superior Court No. 6417, Apache County, Arizona.
- 2.22 “LWC” means Lyman Water Co.
- 2.23 “new” means any occurrence or action taken after the Enforcement Date. A new well is any well that is not an existing well.
- 2.24 “Norviel Decree” means a series of judgments and orders entered in Apache County Superior Court Case No. 569 adjudicating rights to water in the Norviel Decree Area.
- 2.25 “Norviel Decree Area” means the portion of the Eastern LCR basin subject to the jurisdiction of the Norviel Decree, as identified on Exhibit 2.10.
- 2.26 “oil” means those substances included within the definition of that term under 33 U.S.C. § 2701 (23), as it now exists or as it may be amended.
- 2.27 “Oil Pollution Act ” means the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*, as it now exists or as it may be amended.
- 2.28 “Party” is the singular form of “Parties,” which means the persons and entities represented by the signatories to this Settlement Agreement.
- 2.29 “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, as it now exists or as it may be amended.
- 2.30 “reservoir” means a surface water impoundment other than a *de minimis* use.
- 2.31 “Sacred Lake” means the lake located within the Zuni Heaven Reservation that has been used by the Zuni Tribe for religious purposes.
- 2.32 “Settlement Agreement” means this document including all exhibits.
- 2.33 “SJIC” means St. Johns Irrigation and Ditch Company.
- 2.34 “SRP” means Salt River Project Agricultural Improvement and Power District.

- 2.35 “Stream Rehabilitation Program” means AGAF’s management objectives for the LCR, in which AGAF shall acquire riverine or riparian habitat with physical and biological features essential to the establishment or continued existence of threatened, endangered or sensitive species, and convert associated water rights to wildlife purposes in order to specifically benefit those threatened, endangered or sensitive species that have historically occupied or currently occupy the Eastern LCR.
- 2.36 “surface water” means all water that is appropriable under State law.
- 2.37 “SWR” means surface water right.
- 2.38 “TEP” means Tucson Electric Power Co.
- 2.39 “underground water” means any water beneath the surface of the earth regardless of its legal characterization as appropriable or non-appropriable under any applicable law.
- 2.40 “United States,” unless otherwise indicated, means the United States in its capacity as trustee for the Zuni Tribe or its members or otherwise acting on behalf of the Zuni Tribe or its members.
- 2.41 “well” means a man-made opening in the earth through which water may be withdrawn. It includes a combination of wells serving the same Facility.
- 2.42 “Wetland Restoration Project” means the restoration to near original condition and the maintenance of wetland areas on the Zuni Heaven Reservation, and may include a reservoir or other short-term storage facility. The Wetland Restoration Project shall use plant and animal species indigenous to the area.
- 2.43 “Zuni Fee Lands” means lands in Arizona in the LCR basin owned on the Enforcement Date by the Zuni Tribe, whether in its own name or through any related entity, but not held in trust by the United States.
- 2.44 “Zuni Heaven Reservation” see “Zuni Indian Reservation in Arizona”.
- 2.45 “Zuni Indian Reservation in Arizona,” also referred to as “Zuni Heaven Reservation,” “Reservation,” and “Kolhu:wala:wa,” means the following property in Apache County, Arizona:

Sections 26, 27, 28, 33, 34, and 35, Township 15 North, Range 26 East, Gila and Salt River Base and Meridian; and

Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 23, 26, and 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

- 2.46 “Zuni Indian Tribe” also referred to as the “Tribe” or the “Zuni Tribe,” means a body politic and federally recognized Indian nation, and its members.
- 2.47 “Zuni Lands” means the following lands in Arizona that on the Enforcement Date are
- A. within the Zuni Heaven Reservation; or
  - B. held in trust by the United States for the benefit of the Tribe; or
  - C. Zuni Fee Lands.
- 2.48 “Zuni Protection Area” means the area of land described by that name on Exhibit 2.48.
- 2.49 “Zuni Pumping Lands” means the area of land described by that name on Exhibit 2.48.

### ARTICLE 3 – CONDITIONS PRECEDENT

3.1 This Settlement Agreement is effective and binding on the Effective Date. This Settlement Agreement is enforceable when and if, by the Deadline, the events described in subparagraphs 3.1.A – 3.1.L occur:

- A. The Act is approved by Congress in substantially the same form as Exhibit 2.1. Any act of Congress that materially amends Exhibit 2.1 prior to the Enforcement Date of this Settlement Agreement without the written consent of the Parties adversely affected by the amendment shall relieve all Parties of their obligations under this Settlement Agreement; and
- B. The appropriations required by paragraphs 7.5 and 7.6 are deposited in the Fund; and
- C. The Zuni Tribe or the United States acquires either SWRs or options to purchase SWRs, subject to the Norviel Decree, sufficient to provide at least 2,350 AFA, as measured at Lyman Reservoir; and
- D. The Norviel Decree Judge conditionally approves the severance and transfer of rights to water subject to the Norviel Decree, sufficient to provide at least 2,350 AFA, as measured at Lyman Reservoir, for use by the Zuni Tribe on the Zuni Heaven Reservation; and
- E. The Zuni Tribe and LWC execute an agreement, in consultation with SJIC and the City of St. Johns, relating to the process of severance and transfer of SWRs acquired by the Zuni Tribe or the United States, and the pass-through, use or storage of Zuni Tribe SWRs in Lyman Lake and the operation of Lyman Dam, and, if necessary, LWC amends any operating procedures or by-laws in furtherance of their agreement; and
- F. The Parties agree and stipulate to AGAF abstracts for the following water uses existing on the Effective Date: Becker Lake, Becker Lands, Cross L, Lee Valley Reservoir, Nelson Reservoir and Lands, Sipes, Slade, Wenima Wildlife Area, Ocote and Enders, if that property has been acquired by AGAF on or before the Effective Date. When the Parties agree to the form and content of the AGAF abstracts, subparagraphs 4.1.B and 4.2.B shall be amended to incorporate the abstracts and the agreements with respect to the abstracts. At a minimum, amended subparagraph 4.2.B shall provide that AGAF reserves the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes less favorable to it than those set forth in the attached abstracts, and that the Parties reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes more favorable to AGAF than those set forth in the attached abstracts; and
- G. The Parties agree to the location of the observation well used to determine static water levels in subparagraph 5.7.D and that well is installed before the Enforcement Date; and



- H. The Zuni Tribe, the State of Arizona, and Apache County execute an intergovernmental agreement that satisfies all of the conditions in paragraph 6.2; and
- I. The Zuni Tribe acquires title to the section of land adjacent to the Zuni Heaven Reservation described as Section 34, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian; and
- J. The Settlement Agreement and all exhibits requiring signatures are executed; and
- K. The Decree Court approves this Settlement Agreement by a final judgment and decree that is substantially the same form as Exhibit 11.9; and
- L. The Secretary of the United States Department of the Interior publishes in the Federal Register a statement of finding that conditions in subparagraphs 3.1.A – 3.1.K have occurred.

3.2 The Zuni Tribe may, in its discretion, waive the conditions in subparagraphs 3.1.C or 3.1.D, or both. Once waived by the Tribe, these subparagraphs shall have no force or effect and shall not be conditions precedent to the Enforcement Date.

3.3 Other than to take all necessary steps to cause the events described in this Article 3 and paragraph 7.3 to occur, no Party shall be required to perform any of the obligations, or be entitled to any of the benefits, under this Settlement Agreement before the Enforcement Date. After the Enforcement Date, the Parties shall be bound by all provisions of this Settlement Agreement.

3.4 Subject to paragraph 3.2, if each of the events listed in subparagraphs 3.1.A – 3.1.L has not occurred by the Deadline, this Settlement Agreement shall be of no further force or effect and any monies in the Fund, together with any income earned, must be returned to the depositing entity.

## ARTICLE 4 – SURFACE WATER RIGHTS AND ADJUDICATION

### 4.1 Adjudicating Existing Surface Water Uses in the Eastern LCR Basin Based on State Law.

- A. Zuni Abstracts. All existing non-*de minimis* surface water uses on Zuni Lands owned as of the Effective Date are described in abstracts attached as Exhibits 4.1.A(1) *et seq.* Surface water uses on lands acquired between the Effective Date and the Enforcement Date shall be abstracted as agreed upon by the Parties unless these water uses are conditionally severed and transferred pursuant to subparagraph 4.6.D(4). At the time the Decree Court directs, these abstracts shall be used by DWR to propose water rights attributes for Zuni Lands in the manner described in subparagraph 4.1.D. Zuni Tribe *de minimis* uses shall be subject to subparagraphs 4.1.D – 4.1.F.
- B. AGAF Abstracts. Certain existing surface water uses on lands owned by AGAF, described in abstracts prepared in accordance with subparagraph 3.1.F, shall be attached as exhibits to an amendment to this Settlement Agreement. At the time the Decree Court directs, those abstracts shall be used by DWR to propose water rights attributes for AGAF lands in the manner described in subparagraph 4.1.D.
- C. Other Abstracts. LWC and SJIC surface water uses are described in abstracts attached as Exhibits 4.1.C(1) *et seq.* At the time the Decree Court directs, these abstracts shall be used by DWR to propose water rights attributes for LWC and SJIC lands in the manner described in subparagraph 4.1.D.
- D. Preliminary Determinations. For all surface water uses in the Eastern LCR basin, at the time the Decree Court directs, DWR shall prepare a preliminary report assessing and proposing attributes for each surface water use at issue as follows:
  - (1) The Decree Court shall direct the scope of each report, stating the specific geographic area that will be included in each report.
  - (2) The basis for DWR’s assessment shall be the abstracts referenced in subparagraphs 4.1.A, 4.1.B, and 4.1.C, the “Inventory of Water Uses” published by DWR in the fall of 1994, data contained in the Norviel Decree, the letters contained in Exhibit 4.1.D(2), and existing documentation on file with DWR.
  - (3) Existing information shall be supplemented as needed with additional research and investigation including reliance on remote sensing data.
- E. DWR shall give notice that the preliminary report is available and allow comment as prescribed in A.R.S. § 45-456(H). Then, in accordance with A.R.S. § 45-256(H), DWR shall revise the preliminary report as may be appropriate, and file with the Decree Court a final report.

- F. DWR shall file a final report in accordance with A.R.S. §§ 45-256(B) and (H). Water rights claimants in the LCR basin may object to the final report or any part of the final report as provided in A.R.S. § 45-256(B). Based on the evidence, the Decree Court shall determine the proper attributes of each water right.

#### 4.2 Permissible Adjudication Objections.

- A. Zuni Abstracted Uses. The Parties stipulate and agree to the entry of a decree for the Zuni Tribe abstracted water uses described in Exhibits 4.1.A(1) *et seq.* on terms no more favorable than those set forth in the attached abstracts. The United States and the Zuni Tribe reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes less favorable to the Zuni Tribe than those set forth in the attached abstracts. The Parties reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes more favorable to the Zuni Tribe than those set forth in the attached abstracts.
- B. AGAF Abstracted Uses. This subparagraph 4.2.B shall be amended as provided in subparagraph 3.1.F when the Parties have executed an amendment to this Agreement approving AGAF abstracts.
- C. Other Abstracted Uses. The Parties stipulate and agree to the entry of a decree for the LWC and SJIC abstracted water uses described in Exhibits 4.1.C(1) *et seq.* on terms no more favorable than those set forth in the attached abstracts. LWC and SJIC reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes less favorable to them than those set forth in the attached abstracts. The Parties reserve the right to challenge the imposition, by DWR or a court of competent jurisdiction, of attributes more favorable to LWC or SJIC than those set forth in the attached abstracts.
- D. Zuni Tribe Adjudication Objections. The Zuni Tribe and the United States shall not object to *de minimis* water uses or to SWRs based upon an existing decree. The Zuni Tribe and the United States may object to the adjudication of water uses in the LCR basin, other than those water uses described in the previous sentence, only if:
  - (1) the objection is permitted under subparagraph 4.2.A, 4.2.B or 4.2.C;  
or

- (2) the objection is based on state law and the surface water use being adjudicated would reduce or otherwise limit the Zuni Tribe's ability to use its state law-based SWRs, or its SWR described in subparagraph 4.6.B, on Zuni Lands or other lands acquired by or for the Zuni Tribe after the Enforcement Date; provided, however, that at no time shall the Zuni Tribe or the United States object based upon a federal right to surface water or a federal right to underground water.

#### 4.3 New Surface Water Appropriations.

- A. The Judgment and Decree shall contain findings that as of the Effective Date there is no additional surface water available to appropriate in the Norviel Decree Area. Therefore, the Eastern LCR Decree shall prohibit the filing of new applications to appropriate surface water in the Norviel Decree Area for uses commenced after the Effective Date, unless those new surface water uses are located in closed basins.
- B. In the portion of the Eastern LCR that is not currently under the jurisdiction of the Norviel Decree, new appropriations of surface water may be initiated in accordance with state law and the Eastern LCR Decree.

4.4 The Judgment and Decree shall provide that no new reservoirs or dams shall be constructed on the LCR between Lyman Dam and the western boundary of the Zuni Heaven Reservation without the written consent of the Tribe unless

- A. the new dam or reservoir is used for *de minimis* uses, effluent impoundments, tailwater ponds or impoundments of underground water; or
- B. the reservoir is wholly contained within a closed basin; or
- C. the reservoir has no permanent water storage and is operated solely for flood control purposes; or
- D. the water stored in the new reservoir results from a change of use, change in point of diversion, or severance and transfer; provided, however, that the Zuni Tribe retains any state-law objections to severance and transfers.

4.5. The Judgment and Decree shall provide that Zion Dam, formerly known as Udall Reservoir, may be repaired or rebuilt only with the written consent of the Tribe.

#### 4.6 Zuni Tribe SWRs.

- A. As described in subparagraph 4.1.A, the existing surface water uses on Zuni Lands owned on the Effective Date are set forth in abstracts and, subject to subparagraph 4.2.A, are recognized by the other Parties.
- B. The Tribe's SWR for unappropriated flows is set forth in an abstract attached as Exhibit 4.6.B and the Parties shall not object to this abstract. This abstract

shall be filed with the Decree Court and shall be approved by the Decree Court in conjunction with the approval of this Settlement Agreement.

- C. As described in paragraph 7.7, AGAF shall sever and transfer certain SWRs to the Zuni Tribe or to the United States for use on the Zuni Heaven Reservation.
- D. In addition to the water available to the Zuni Tribe and to the United States under subparagraphs 4.6.A and 4.6.B, the Zuni Tribe or the United States is entitled to purchase up to 3,600 AFA minus any state contribution of SWRs in accordance with paragraph 7.7, as measured at Lyman Reservoir, from willing sellers in the Norviel Decree Area. If the Zuni Tribe acquires SWRs below Lyman Dam, then the SWR shall be measured, for purposes of this Settlement Agreement, by the amount of water that would be available at Lyman Reservoir.
  - (1) Purchase of SWR. Promptly after the Effective Date, the Parties shall communicate the terms of this Settlement Agreement to other SWR holders in the Norviel Decree Area, including offers to purchase land or water rights subject to the Norviel Decree upon terms and conditions as determined by the Zuni Tribe or by the United States. The Parties shall cooperate in good faith in any solicitation process, such as by sharing lists of SWR holders and addresses and providing related information that may be requested by one Party and in the possession of another Party.
  - (2) Priority. The priority date of the SWRs purchased by the Zuni Tribe for severance, transfer and delivery to the Zuni Heaven Reservation shall be the priority date of those SWRs as set forth in the Norviel Decree.
  - (3) Party Cooperation. After the Enforcement Date, each Party agrees to not unreasonably withhold its written consent and approval for severance and transfers under subparagraph 4.6.D(5) and paragraph 7.7. Before the Enforcement Date, each Party agrees to not unreasonably withhold its written consent and approval to conditional severance and transfers under subparagraph 4.6.D(4) and paragraph 7.7. Furthermore, the Parties agree not to object to the severance and transfer of SWRs to the Zuni Tribe or to the United States for the Wetland Restoration Project on the ground that the uses contemplated in connection with the Wetland Restoration Project are not irrigation uses.

- (4) Conditional Severance and Transfers. Before the Enforcement Date, the Zuni Tribe, the United States, or AGAF may apply to the Norviel Decree Court for a conditional severance and transfer of any SWRs purchased for the Tribe's benefit in accordance with this Settlement Agreement. Conditional severance and transfers do not become final and non-conditional until the Enforcement Date.
  - (5) Severance and Transfers. After the Enforcement Date, the Zuni Tribe shall apply to sever and transfer a SWR in accordance with Arizona law.
- E. Nothing in this Settlement Agreement precludes the Zuni Tribe from purchasing or severing and transferring SWRs, in addition to those specified in subparagraph 4.6.D, in accordance with state law.

4.7 Surface Water Quality Monitoring. AGAF shall periodically, but no less than twice annually, sample and test surface water at AGAF's Wenima property. AGAF shall test in accordance with Exhibit 4.7, which may be amended by the mutual agreement of the Zuni Tribe and AGAF. AGAF will provide results of each test to the Zuni Tribe within 15 days of when AGAF obtains final results.

4.8 Timing for Surface Water Quality Monitoring. After 30 years after the Enforcement Date, AGAF may terminate its obligations under paragraph 4.7.

## ARTICLE 5 – UNDERGROUND WATER

5.1 Existing Wells. The Zuni Tribe and the United States shall not object to, dispute, or challenge in the LCR Adjudication or in any other judicial or administrative forum or proceeding, the withdrawal or use of underground water in the Eastern LCR basin, whether the source is appropriable or non-appropriable, from existing wells. This prohibition includes, but is not limited to, the withdrawal or use of underground water that interferes with surface water flow.

5.2 Cataloging Existing Wells. To aid the Parties in identifying existing wells in the Eastern LCR, DWR shall compile a catalog that identifies all existing wells by well registration number, legal description and owner. This catalog, and its subsequent amendments, shall be listed in the Eastern LCR Decree.

- A. Exempt wells. Exempt wells shall not be cataloged.
- B. Non-Exempt Wells. DWR shall compile the catalog using existing well registrations and the letters contained in Exhibit 4.1.D(2). In addition, for existing wells that are not currently registered, a voluntary well registration program shall be created to allow registration and inclusion in the catalog. DWR shall verify the location of all non-exempt registered wells through the use of global positioning system units.
- C. Catalog. Once the locations of the registered wells have been verified and after the Enforcement Date, DWR shall submit the catalog of non-exempt wells to the Decree Court with notice as ordered by the Decree Court.
- D. Objections. The only objection the Zuni Tribe or the United States may assert in connection with the catalog of non-exempt wells is that a well description is inaccurate. Owners of wells may object that the catalog contains an improper description of a well they own. No other objections shall be permitted. The Decree Court shall resolve any objections as to the accuracy of the list.
- E. Procedures. The procedures described by subparagraphs 5.2.B – 5.2.D must be conducted on a sequential basis by DWR and the Decree Court, focusing on a relatively small group of wells or a limited geographic area at one time.
- F. Time Limit. The catalog in the Eastern LCR Decree of non-exempt wells must be completed within 3 years after the Enforcement Date. The catalog may be supplemented, however, upon application to the Decree Court, for existing wells that were omitted.

5.3 Zuni Use of Underground Water. The Parties recognize and shall not object to, dispute or challenge in the LCR Adjudication or in any other judicial or administrative forum or proceeding, the Zuni Tribe's withdrawal or use of 1,500 AFA of underground water from wells on the Zuni Pumping Lands if the water is used on those lands.

5.4 Except as provided in this Settlement Agreement, the Parties recognize and shall not object to, dispute, or challenge in the LCR Adjudication or in any other judicial or administrative forum or proceeding, the Zuni Tribe's withdrawal of underground water on Zuni Lands in accordance with applicable law.

5.5 Exempt Wells. The Zuni Tribe and the United States shall not object to, dispute or challenge any exempt well in the LCR basin.

5.6 New Non-Exempt Wells Outside the Zuni Protection Area. The Zuni Tribe and the United States shall not object to, dispute, or challenge in any judicial or administrative forum or proceeding the construction of any new well outside the Zuni Protection Area unless the new well is being constructed on lands owned by or for the Zuni Tribe. The Zuni Tribe and the United States shall not object to, dispute or challenge, in the LCR Adjudication or in any other judicial or administrative forum or proceeding, the withdrawal of underground water from any new non-exempt well located outside the Zuni Protection Area unless all of the conditions in subparagraphs 5.6.A through 5.6.C are met. The Zuni Tribe and the United States bear the same burdens of proof and persuasion that any state party would when objecting to, disputing or challenging another state party's water use in the LCR basin.

- A. Such wells are interfering, as defined by applicable state law, with the Zuni Tribe's SWR, other than with the flow rights described in subparagraph 4.6.B; and
- B. The Zuni Tribe SWR at issue was appurtenant to the place of use before the new well was drilled; and
- C. The objection, dispute, or challenge relates to a stream or other surface water condition established before the new well was drilled.

5.7 New Wells Inside the Zuni Protection Area. Inside the Zuni Protection Area, the Zuni Tribe and the United States retain claims against new non-exempt wells or withdrawals from those new wells, under state or federal law, for groundwater rights and for injury to surface water rights, injury to groundwater rights and injury to water quality, with the following qualifications:

- A. Burden of Proof. The Zuni Tribe and the United States shall bear the same burdens of proof and persuasion that any state party would when objecting to, disputing, or challenging another state party's water use in the LCR basin.



- B. **Pumping Protection Agreement Exception.** The Zuni Tribe and the United States shall enter into a Pumping Protection Agreement with any landowner in the Zuni Protection Area who agrees to limit the capacity of new wells on his land to a total of 500 gpm per section of land, or a prorated amount if the lands are less than one section. This Pumping Protection Agreement shall be in the form of Exhibit 5.7.B. If the landowner, the Zuni Tribe and the United States enter into a Pumping Protection Agreement, then the Zuni Tribe and the United States shall waive any right to make a claim against or object to new wells or to withdrawals of underground water, in any judicial or administrative forum or proceeding, that are consistent with the terms of that Pumping Protection Agreement. Executed Pumping Protection Agreements shall be filed with the Decree Court.
- C. **Zuni Pumping Limitation.** If the Zuni Tribe or the United States withdraw more than 1,500 AFA (as determined by a continuous 3 year rolling average of the amount pumped during each calendar year) from the Zuni Pumping Lands, then the Zuni Tribe and the United States waive permanently any and all rights to make a claim against or object to, dispute or challenge new wells or withdrawals of underground water in the Zuni Protection Area. The Zuni Tribe or the United States shall report the Tribe's annual pumping to the Decree Court by April 15 of each year.
- D. **Claim Initiation.** The Zuni Tribe and the United States shall not assert any claims against, object to, dispute or challenge new wells or withdrawals of underground water from new wells in the Zuni Protection Area unless the Static Water Level Decline is more than 50 feet. The determination of Static Water Level Decline is subject to the following definitions and directives:
- (1) "Static Water Level Decline" means the decline in the underground water level, determined by comparing the average annual static water level with the existing static water level in the regional aquifer (presently referred to as the "C Aquifer").
  - (2) The point of measurement shall always be an observation well existing on the Enforcement Date located in accordance with subparagraph 3.1.G, or, in the future, a reasonably chosen replacement well.
  - (3) All static water level measurements, including the existing static water level measurement, shall be taken annually on or about March 1; provided that the well has not been operated at any time during the four months immediately preceding the date of measurement. The existing static water level shall be determined by the first static water level measurement taken following the Effective Date of this Settlement Agreement. The average annual static water level shall be determined on the basis of a continuous 3 year rolling average of the annual static water level measurement in the well.

- (4) The Zuni Tribe or the United States shall report the static water level measurements to the Decree Court by April 15 of each year. The Zuni Tribe shall provide reasonable access to the measurement well for verification and monitoring purposes.

5.8 Other Agreements. The Zuni Tribe and the United States have entered into agreements with SRP, TEP and ASLD that recognize certain intended uses of underground water. These agreements are attached to this Settlement Agreement as Exhibits 5.8.A, 5.8.B and 5.8.C. To the extent that the agreements are inconsistent with this Settlement Agreement, the terms of the agreements must prevail as among the parties to the agreements.

5.9 Vested Rights. Except as described in paragraph 5.3, recognizing the Zuni Tribe's use of 1,500 AFA of underground water, this Settlement Agreement does not create any vested right to groundwater under state law, or any priority to the use of groundwater that would be superior to any other right or use of groundwater under state law, whether through this Settlement Agreement, by incorporation of any abstract, agreement or stipulation prepared under this Settlement Agreement, or through Congressional legislation approving, confirming or ratifying this Settlement Agreement or any abstract, agreement or stipulation prepared under this Settlement Agreement. Notwithstanding the preceding sentence, the rights of parties to the agreements referred to in paragraph 5.8, as among themselves, shall be as stated in those agreements. Furthermore, if a priority system to groundwater is established, all Parties retain the right to assert their respective priorities.

5.10 State and Federal Water Quality Data. When a Party submits water quality data for wells in the Eastern LCR basin pumping underground water to the Arizona Department of Environmental Quality ("ADEQ"), DWR, or the United States Environmental Protection Agency ("USEPA"), that Party shall provide the Zuni Tribe with a copy. When the Zuni Tribe or the United States submits water quality data for wells on Zuni Lands to the ADEQ, DWR, or USEPA, the Zuni Tribe shall provide any Party who has previously provided data to the Zuni Tribe pursuant to this paragraph 5.10 with a copy. The copies will be provided within 15 working days from the date the data is provided to the department or agency.

5.11 Underground Water Quality Monitoring.

- A. SRP will undertake, at its own expense, to monitor the following wells and provide this water quality testing data to the Zuni Tribe:
  - (1) SRP will provide one initial test from well 42W.
  - (2) SRP will test wells 26W, 43W, 45W, 46W, 47W, and 48W on a triennial basis.

B. Well Testing

- (1) SRP will test using the following EPA Methods  
VOCs 8260AZ  
Semi-VOCs 8270AZ  
Mercury 7470A  
Metals 6010B
- (2) For VOCs and Semi-VOCs, GC/MS will be run to scan for detection of pesticides and herbicides. If any herbicide or pesticide is detected, the laboratory will provide an estimated concentration of the substance.
- (3) For each sampling event, SRP will test for 13 priority pollutant metals: antimony, arsenic, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, thallium, and zinc.
- (4) SRP will provide a Sampling and Analysis Plan (SAP) for the program. SRP will only sample a well if the sampling protocol can be followed at the time of sampling. SRP will make reasonable efforts to follow the sampling protocol.
- (5) All sample analysis will be conducted by SRP or by another laboratory licensed by the State of Arizona's Environmental Laboratory Licensure Program.
- (6) SRP will test wells only if SRP is given the necessary access to take the appropriate samples. SRP will make reasonable efforts to gain access to well sites.
- (7) Monitoring will commence within one year after the Enforcement Date. That initial sampling date will determine when any future monitoring is due.

5.12 Timing for Underground Water Quality Monitoring. After 30 years after the Enforcement Date any Party may terminate its obligations under paragraphs 5.10 and 5.11.

## ARTICLE 6 – TRUST LANDS

### 6.1 Lands to be Taken Into Trust.

- A. Upon satisfaction of the conditions in paragraph 6.2, the Parties shall not object to actions necessary to authorize and direct the Secretary of the Interior to take the legal title of the following lands in Arizona, as shown on Exhibit 6.1.A, and hold such title in trust for the benefit of the Zuni Tribe:

(1) In T.14N., R.27E., Gila and Salt River Base and Meridian:

Section 13: SW $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 23: N $\frac{1}{2}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$ ,  
SE $\frac{1}{4}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 24: NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$   
Section 25: N $\frac{1}{2}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$

(2) In T.14N., R.28E., Gila and Salt River Base and Meridian:

Section 19: W $\frac{1}{2}$  E $\frac{1}{2}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ ,  
NW $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  SW $\frac{1}{4}$   
Section 29: SW $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  N $\frac{1}{2}$  SW $\frac{1}{4}$ ,  
S $\frac{1}{2}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 30: W $\frac{1}{2}$ , SE $\frac{1}{4}$   
Section 31: N $\frac{1}{2}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  S $\frac{1}{2}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , E $\frac{1}{2}$   
SW $\frac{1}{4}$ , N $\frac{1}{2}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$   
SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$

- B. Upon satisfaction of the conditions in paragraph 6.2, the Parties shall not object to actions necessary to authorize and direct the Secretary of the Interior to take the legal title of the following lands in Arizona, as shown on Exhibit 6.1.A, and hold such title in trust for the benefit of the Zuni Tribe upon acquisition by the Zuni Tribe:

(1) In T.14N., R.26E., Gila and Salt River Base and Meridian:

Section 25: N $\frac{1}{2}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  S $\frac{1}{2}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ , NE $\frac{1}{4}$   
NW $\frac{1}{4}$  SW $\frac{1}{4}$

(2) In T.14N., R.27E., Gila and Salt River Base and Meridian:

Section 14: SE $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$   
Section 16: S $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 19: S $\frac{1}{2}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 20: S $\frac{1}{2}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ , E $\frac{1}{2}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 21: N $\frac{1}{2}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ ,  
N $\frac{1}{2}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$ ,  
SW $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$

Section 22: SW $\frac{1}{4}$  NE $\frac{1}{4}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  NW $\frac{1}{4}$ ,  
SE $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  N $\frac{1}{2}$   
SE $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$   
Section 24: N $\frac{1}{2}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$   
Section 29: N $\frac{1}{2}$  N $\frac{1}{2}$   
Section 30: N $\frac{1}{2}$  N $\frac{1}{2}$ , N $\frac{1}{2}$  S $\frac{1}{2}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$   
Section 36: SE $\frac{1}{4}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$

(3) In T.14N., R.28E., Gila and Salt River Base and Meridian:

Section 18: S $\frac{1}{2}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  NW $\frac{1}{4}$   
SW $\frac{1}{4}$ , S $\frac{1}{2}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 30: S $\frac{1}{2}$  NE $\frac{1}{4}$ , W $\frac{1}{2}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$   
Section 32: N $\frac{1}{2}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$   
SE $\frac{1}{4}$

- C. Upon satisfaction of the conditions in paragraph 6.2, the Parties shall not object to actions necessary to authorize and direct the Secretary of the Interior to take the legal title of the following lands in Arizona, as shown on Exhibit 6.1.A, and hold such title in trust for the benefit of the Zuni Tribe and make such lands part of the Zuni Indian Reservation in Arizona upon acquisition by the Zuni Tribe:

Section 34, T.14 N., R.26 E., Gila and Salt River Base and Meridian.

6.2 Conditions Precedent to Taking Lands Into Trust. The United States shall take the legal title of the lands identified in subparagraphs 6.1.A, 6.1.B, and 6.1.C and hold such title in trust for the benefit of the Zuni Tribe and also shall make the lands identified in subparagraph 6.1.C part of the Zuni Indian Reservation in Arizona when all of the following conditions are satisfied:

- A. The Zuni Tribe, the State of Arizona, and Apache County execute an intergovernmental agreement that includes all of the following provisions:
- (1) For lands taken into trust pursuant to subparagraphs 6.1.A, 6.1.B, and 6.1.C, the Zuni Tribe shall not claim federal reserved rights to either underground water or surface water.
  - (2) The rights to surface water for the lands taken into trust pursuant to subparagraphs 6.1.A and 6.1.C are subject to the terms of this Settlement Agreement, including but not limited to, subparagraph 4.1.A. For lands taken into trust pursuant to subparagraph 6.1.B, the Zuni Tribe retains any rights or claims to surface water associated with these lands under state law, subject to the terms of this Settlement Agreement. Moreover, any water rights appurtenant to lands taken into trust pursuant to subparagraphs 6.1.A, 6.1.B, and 6.1.C shall not be subject to forfeiture or abandonment.

- (3) For lands taken into trust pursuant to subparagraphs 6.1.A, 6.1.B, and 6.1.C, the ability to withdraw groundwater shall be subject to Article 5.
- (4) For lands taken into trust pursuant to subparagraphs 6.1.A and 6.1.B, the Zuni Tribe shall pay in lieu payments equal to all ad valorem property taxes assessed by any state, county, or local taxing entity that would otherwise be applicable to those lands, if they were not in trust status.
- (5) The Zuni Tribe and the United States shall not unreasonably withhold consent for easements and rights-of-way for roads, utilities, and other necessary accommodations for adjoining landowners across the lands identified in subparagraphs 6.1.A and 6.1.B unless such easements and rights-of-way will cause significant and substantial harm to the Wetland Restoration Project. If such harm is anticipated, the Zuni Tribe shall negotiate in good faith with the person or entity seeking the easements or rights-of-way for a reasonable accommodation of their mutual interests.
- (6) The Zuni Tribe shall adopt a water code regulating water uses on the trust lands identified in subparagraphs 6.1.A and 6.1.B that is reasonably equivalent to state water law, including but not limited to, statutes relating to dam safety and groundwater management. Until the Zuni Tribe adopts a water code, state law controls water use and water regulation on the lands referred to in subparagraphs 6.1.A and 6.1.B.
- (7) The Zuni Tribe shall exercise jurisdiction over wildlife management on the trust lands identified in subparagraphs 6.1.A and 6.1.B. If the Zuni Tribe authorizes hunting, trapping or fishing, other than for Zuni religious practices, tribal law will establish a permit and fee system reasonably equivalent to state law. Zuni Tribe jurisdiction over these lands shall provide for wildlife resource management that is at least as stringent as comparable state law, except for religious practices exercised by the Tribe.
- (8)
  - (a) The Parties agree that the lands identified in subparagraphs 6.1.A and 6.1.B must be treated as other state lands, and not as Indian Country, for purposes of jurisdiction under the Clean Air Act and the Safe Drinking Water Act. The Zuni Tribe will not seek to regulate, or accept any delegation of authority to regulate, air quality or water quality on, under, or above these trust lands.
  - (b) The United States Environmental Protection Agency shall have authority to administer all programs under the Clean

Water Act for the lands identified in subparagraphs 6.1.A and 6.1.B. The Zuni Tribe will not seek to regulate, or accept any delegation of authority to regulate, water quality on, under, or above these trust lands. In issuing any permits for the lands identified in subparagraphs 6.1.A and 6.1.B, the United States Environmental Protection Agency shall incorporate only standards promulgated by the United States Environmental Protection Agency or the Arizona Department of Environmental Quality, and not tribal standards.

- (9) With respect to Zuni Fee Lands within the LCR basin that are outside of the lands described in subparagraphs 6.1.A, 6.1.B, and 6.1.C, the State of Arizona and Apache County acknowledge that portions of such lands, including but not limited to, the Tribe's pilgrimage route, are associated with the Tribe's religious practices. When acting in a proprietary capacity with respect to such lands, the State of Arizona and Apache County shall not unreasonably withhold any necessary approvals for the Zuni Tribe to use such lands for religious, sustenance and related purposes. When acting in either a governmental or proprietary capacity with respect to such lands, the State of Arizona and Apache County agree that they shall consult with the Zuni Tribe with regard to the Zuni Tribe's use of such lands for religious, sustenance and related purposes before taking action that knowingly affects such use, and shall cooperate with the Zuni Tribe, to the extent permitted by State law, to accommodate such use.
  - (10) The Tribe waives its sovereign immunity from suit in the Superior Court of Apache County, Arizona for the limited purposes of enforcing the terms of the intergovernmental agreement, and any intergovernmental agreement required to be entered into by the Tribe under the terms of the intergovernmental agreement; however, any such waiver of immunity from suit shall exclude claims for monetary awards, except as specifically provided in the intergovernmental agreement.
- B. The Secretary of the Interior publishes in the Federal Register a written certification to the Governor of the State of Arizona that all of the conditions in this paragraph 6.2 have been satisfied for the lands described in subparagraphs 6.1.A – 6.1.C.

## ARTICLE 7 – DEVELOPMENT FUND; CONTRIBUTIONS

7.1 Establishment of the Fund. In accordance with the Act, an account to be managed by the Secretary of the Interior shall be established in the Treasury of the United States, referred to as the Zuni Indian Tribe Development Fund. The Fund shall consist of the amounts to be contributed in paragraphs 7.5 and 7.6. The Secretary shall deposit into the Fund any other monies paid to the Secretary on behalf of the Zuni Tribe pursuant to the Settlement Agreement.

7.2 Investment of the Fund. The Secretary shall invest amounts in the Fund in accordance with

- A. the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. § 161);
- B. the first section of the Act approved June 24, 1938, as amended (25 U.S.C. § 162a).

7.3 Management of and Withdrawal From the Fund. The Secretary shall manage the Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Zuni Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4001 *et seq.*) (“Trust Fund Reform Act”) and the Settlement Agreement. Notwithstanding the foregoing, before the Enforcement Date, up to \$3,500,000 of the monies under paragraph 7.5 shall be distributed to the Zuni Tribe solely upon a written request stating the need for the funds for water rights or options purchases. If the Zuni Tribe exercises its right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any oversight over or liability for the accounting, disbursement or investment of the monies withdrawn from the Fund, except as provided in the withdrawal plan.

7.4 Availability of Monies From the Fund

- A. Those monies allocated by the Secretary to the accounts in the Fund established under subsection 6(a) of the Act shall draw interest consistent with paragraphs 7.2 and 7.3 upon appropriation.
- B. Except as provided in paragraph 7.3 and subparagraph 7.4.C, the monies contributed in accordance with paragraphs 7.5 and 7.6 shall be available for expenditure or withdrawal only after the Enforcement Date.
- C. If this Settlement Agreement has become null and void under Article 3, the United States shall be entitled to set-off any monies expended or withdrawn as provided in paragraph 7.3, together with any interest accrued thereon, against any claims asserted by the Zuni Tribe against the United States related to water rights at the Zuni Heaven Reservation. Any water rights acquired with these monies shall be credited against any water rights secured by the Zuni Tribe or by the United States for the Zuni Heaven Reservation in the Little Colorado River General Stream Adjudication or in any future settlement of these claims.



7.5 United States Appropriation. The United States shall appropriate \$19,250,000 for use by the Zuni Tribe or by the United States. After the monies authorized in this paragraph 7.5 have been appropriated and the same has been deposited in the Fund, the United States shall have no further obligation for any operation, maintenance or repair costs for the Zuni Wetland Restoration Project or water deliveries thereto; provided, however, that this provision shall not affect programmatic support from the United States for the implementation of this Settlement Agreement and shall not affect any potential United States liability for actions it takes in furtherance of this Settlement Agreement.

7.6 Arizona Appropriation. The State of Arizona shall appropriate \$1,613,000 for use by the Zuni Tribe or by the United States. From this appropriation, \$613,000 must be used in conformity with the purposes of the Water Protection Fund (see A.R.S. § 45-2101). Any grants approved by the Water Protection Fund Commission to the Zuni Tribe from and after March 1, 2000, up to a maximum of \$613,000, must be credited against this obligation. This paragraph 7.6 is not intended to alter the terms of any past or future agreements between the Zuni Tribe and the Arizona Water Protection Fund Commission.

7.7 AGAF Contribution. As part of the State of Arizona's contribution to this settlement, AGAF shall expand an ongoing Stream Rehabilitation Program ("Program") above the Zuni Heaven Reservation. The objectives of the Program are to provide habitat for endangered, threatened, or candidate species and other wildlife and to enhance stream flow. These goals have been achieved by acquiring agricultural land with irrigation water rights under the Norviel Decree, and then dedicating these rights to wildlife uses. As a contribution to this settlement, it is AGAF's goal to sever and transfer 1,000 AFA of surface water for use at the Zuni Tribe's Wetland Restoration Project. AGAF's contribution to this settlement is subject to the following qualifications:

- A. Water for Zuni Wetland Restoration Project. AGAF shall spend \$5,000,000 from Heritage Program funds or other sources to acquire additional lands with irrigation rights or surface water rights alone for inclusion in the Program. AGAF shall determine, in its sole discretion, what portion of the water rights appurtenant to lands presently dedicated to the Program, or acquired in the future, are not required for wildlife purposes ("Excess Rights"). To the extent permissible under state law, AGAF shall sever and transfer up to 1,000 AFA of Excess Rights, as measured at Lyman Reservoir, to the Zuni Tribe or to the United States for wetland irrigation use at the Zuni Tribe's Wetland Restoration Project. All water deliverable to the Wetland Restoration Project under this paragraph 7.7 must be deliverable via a natural tributary or the LCR, or both, and must provide benefit for wildlife at the wetland. Despite paragraphs 8.1 and 8.2, if the Zuni Tribe does not use the Excess Rights as required in this subparagraph 7.7.A, the Excess Rights shall revert back to AGAF, and the Parties shall not object to the reversion.
- B. Timing. Subject to the terms stated in subparagraphs 7.7.C – 7.7.G, and the lawful purposes associated with the funds used to purchase existing and later acquired properties, AGAF shall have 15 years from the Effective Date to sever and transfer to the Zuni Tribe or to the United States the rights to

receive 1,000 AFA, which shall be severed from existing and later acquired properties.

C. Contingencies.

- (1) The Zuni Tribe and the United States acknowledge that the transferred water rights may yield less than 1,000 AFA of water at Lyman Reservoir due to factors beyond AGAF's control. For example, AGAF cannot assure that property meeting criteria for AGAF controlled funds and having sufficient Excess Rights can be acquired, or that water rights can be severed and transferred to the Zuni Tribe or the United States within the allotted time for performance. AGAF's obligations under this Settlement Agreement shall be deemed satisfied upon either
  - (a) the severance and transfer to the Zuni Tribe or to the United States of the rights to 1,000 AFA, as measured at Lyman Reservoir, from properties currently owned or to be acquired in the future by AGAF; or
  - (b) the expenditure of a total of \$6,000,000 under the Program. If AGAF has satisfied this subparagraph (b) but not subparagraph (a), then AGAF shall continue severing and transferring the Excess Rights in connection with future acquisitions, if any, under the Program until a total of 1,000 AFA of water rights have been severed and transferred to the Zuni Tribe or to the United States.

D. Program Acquisitions. Unless the Zuni Tribe and AGAF otherwise agree, the land and water rights that count towards the five to six million dollar expenditure include acquisitions in which the Zuni Tribe and AGAF have agreed, prior to an acquisition, that

- (1) the value of the water rights as a percentage of the total appraised value of each acquisition, as determined according to the buyer's final appraisal, is at least 25% of the total appraised value of the acquisition; and

- (2) any portion of the Excess Rights associated with an acquisition is physically capable of reaching Lyman Reservoir in a year equivalent to typical hydrologic conditions as defined by median flow. If AGAF and the Zuni Tribe do not agree that the Excess Rights can reach Lyman Reservoir, then either may seek the opinion of an independent hydrologist that AGAF and the Zuni Tribe approve. The Zuni Tribe shall not withhold its agreement to include the acquisition if the independent hydrologist certifies that water is physically capable of reaching Lyman Reservoir. If the independent hydrologist does not certify that water is physically capable of reaching Lyman reservoir, then the property will not count towards AGAF's contribution, unless the Zuni Tribe otherwise agrees to include the acquisition towards AGAF's contribution.
- E. Severance and Transfer. Severance and transfer of Excess Rights for the Program must follow subparagraph 4.6.D(4) before the Enforcement Date and subparagraph 4.6.D(5) after the Enforcement Date. AGAF shall conduct any studies required in support of its application. The Arizona Attorney General's Office shall petition the Court for a conditional severance and transfer of Excess Rights at Wenima, an existing AGAF rehabilitation site above Lyman Reservoir, as soon as practicable, in order to establish an efficient transfer procedure. The Parties shall cooperate in seeking approval of this petition, as set forth in subparagraph 4.6.D(3).
- F. Party Assistance. Many of the water rights that could be acquired by AGAF in the future are located within areas served by LWC, SJIC, or Round Valley Water Users' Association. These Parties agree to assist AGAF in evaluation of water rights or parcels of available land with water rights for inclusion in the Program.
- G. Consultation with Zuni. AGAF shall consult specifically with the Zuni Tribe about a proposed acquisition and seek the Zuni Tribe's advice on the amount of water the Zuni Tribe estimates will return to the LCR by converting existing rights to wildlife purposes. AGAF shall notify the Zuni Tribe at the start of the public review process of any proposed acquisition that may qualify towards AGAF's obligation under this Settlement Agreement. AGAF shall provide the Zuni Tribe with management plans and other appropriate documents as may exist during the public review process, and provide the Zuni Tribe the opportunity to review and comment on the proposed acquisition and present its views to AGAF prior to a final decision by AGAF.

7.8 SRP Contribution. SRP shall contribute a total of \$1,000,000.00 to be used towards providing a water supply to the Sacred Lake and the re-establishment of riparian vegetation on the Zuni Heaven Reservation. This contribution may not be used for land acquisition. To satisfy its contribution, SRP shall make an initial payment of \$500,000.00 to the Tribe within 60 days after the Enforcement Date. The second and final payment of \$500,000.00 is due one year after the date of the initial payment.

7.9 ASLD Contribution. ASLD shall release and quitclaim to the Zuni Tribe or the United States all of ASLD's right, title and interest in the surface water rights in Section 32, Township 14 North, Range 28 East, Gila and Salt River Base and Meridian, that are more particularly described in SOC # 39-86042 and Exhibit 4.1.A(1) *et seq.*

## ARTICLE 8 – AUTHORIZED USES

8.1 Authorized Water Uses on Zuni Fee Lands. The Zuni Tribe may use water appurtenant to its Zuni Fee Lands outside the Zuni Heaven Reservation for any purpose permissible under state law.

8.2 Authorized Water Uses on the Reservation. Water rights made available under this Settlement Agreement and used on the Zuni Heaven Reservation shall be held in trust by the United States in perpetuity, and shall not be subject to forfeiture or abandonment. State law does not apply to water uses on the Zuni Heaven Reservation. Furthermore, the State of Arizona may not regulate or tax such water or uses of such water, but the Decree Court or the Norviel Decree Court may assess administrative fees for delivery of such water. Subject to paragraph 7.7, the Zuni Tribe shall use water made available to it under this Settlement Agreement on the Zuni Heaven Reservation for any use it deems advisable. The Zuni Tribe or the United States shall not, however, sell, lease, transfer, or transport water made available to it for use on the Zuni Heaven Reservation to any other place; provided, however, that water may be severed and transferred from the Zuni Heaven Reservation to other Zuni Lands, if the severance and transfer is accomplished in accordance with state law. Once transferred to any lands held in fee, that water shall be subject to state law.

## ARTICLE 9 – OTHER CONSIDERATIONS

9.1 Disclaimer. Nothing in this Settlement Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved rights, aboriginal claims, or any other Indian claims to water or lands in any judicial or administrative forum or proceeding.

9.2 Evidentiary Effect of Negotiations. This Settlement Agreement has been arrived at in the process of good faith negotiation for the purpose of resolving legal disputes, including pending litigation, and all Parties agree that no conduct, statements, offers or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal forum or proceeding other than one for approval, confirmation, interpretation, or enforcement of this Settlement Agreement.

### 9.3 Effect of Execution by the State of Arizona.

- A. Execution by the Governor. Execution of this Settlement Agreement by the Governor of the State of Arizona constitutes the commitment of the State to assist in carrying out the provisions of the Settlement Agreement to the extent it may do so in accordance with its responsibility and authority under the law.
- B. Execution by State Agencies. Execution of this Settlement Agreement by ASLD, AGAF, and the Arizona State Parks Board signifies that provisions of this Settlement Agreement affecting the State as an adjudication claimant have been approved by ASLD, AGAF, and the Arizona State Parks Board, and these agencies assume the obligations of and are entitled to the benefits of this Settlement Agreement.
- C. Exceptions. It is not intended that this Settlement Agreement shall limit the enforcement or regulatory authority of any State agency or shall be determinative of any decision to be made by any State agency in any administrative, adjudicatory or rule making proceeding not inconsistent with this Settlement Agreement. Except as provided in this Settlement Agreement, nothing in this paragraph 9.3 shall be construed as a waiver of any rights that the State of Arizona has as to its natural resources.

9.4 Contingent on Appropriation of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this Settlement Agreement is contingent upon appropriation of funds therefor. If funds are not appropriated, the United States shall accrue no liability.

9.5 Further Negotiations Regarding Future Operation of Lyman Lake. The Zuni Tribe, the United States, and LWC agree that, in conjunction with the negotiation of the agreement described in subparagraph 3.1.E, they shall negotiate with the Arizona State Parks Board regarding terms and conditions on which they would agree to maintain a minimum pool in Lyman Lake for recreational use.

9.6 Negotiations with SJIC. The Zuni Tribe, the United States, and SJIC agree to negotiate an operating agreement that recognizes the Zuni Tribe's participation as a shareholder in SJIC in a manner similar to any other shareholder in SJIC, and further recognizes that the Tribe shall bear any expenses associated with delivery of the Zuni Tribe's SWRs through SJIC facilities.

9.7 SJIC and City of St. Johns Claims. By entering into this Settlement Agreement, neither the City of St. Johns nor SJIC waives any rights or is estopped from making any claims they may have under state law, excluding punitive damages, against any Party to this Settlement Agreement resulting from water discharges from Lyman Dam to supply water to lands owned by or for the Zuni Tribe. The Zuni Tribe hereby waives any claim of sovereign immunity for purposes of any such suit or claims under this paragraph 9.7.

9.8 Officials Not to Benefit. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Settlement Agreement or to any benefit that may arise from this Settlement Agreement. This restriction shall not be construed to extend to this Settlement Agreement if made with a corporation or company for its general benefit.

9.9 State Law Requirements. This Settlement Agreement is subject to the provisions of A.R.S. § 38-511.

9.10 Counterparts. This Settlement Agreement may be executed in duplicate originals, each of which shall constitute an original Settlement Agreement.

9.11 Consultation. Upon request by the Zuni Tribe, the Parties agree to consult with the Zuni Tribe if any data provided to the Zuni Tribe under paragraphs 4.7, 5.10, and 5.11 demonstrates the presence of a Hazardous Substance or oil.

## ARTICLE 10 – ADMINISTRATION

10.1 Jurisdiction. Notwithstanding paragraph 8.2, the Decree Court retains jurisdiction over the Judgment and Decree and the Settlement Agreement. Unless barred by Arizona law, any hearings pertaining to the Decree shall be conducted in Apache County.

10.2 New and Existing Uses. Water uses under the Norviel Decree shall be administered in accordance with that decree, until modified by the Decree Court.

10.3 Zuni Calls. The Zuni Tribe or the United States shall not enforce the priority of non-Norviel Decree water rights that it holds against Norviel Decree water rights.

10.4 Governing Law. This Settlement Agreement shall be construed in accordance with the laws of the State of Arizona and applicable federal law.

10.5 Successors and Assigns. This Settlement Agreement and the attached waivers and agreements shall, unless otherwise indicated, be binding on and inure to the benefit of the Parties, and their respective successors and assigns.

10.6 Enforcement by Non-Parties. The provisions of subparagraph 4.2.D and Articles 5 and 11 of this Settlement Agreement are intended to protect and benefit all landowners and water users in the LCR basin, whether or not they are parties to the Settlement Agreement or to the LCR Adjudication; the benefits to such non-parties are a consideration for this Settlement Agreement; such non-parties are intended third-party beneficiaries of this Settlement Agreement; and such provisions may be enforced or asserted by any landowner or water user in the LCR basin.

10.7 Integration. This Settlement Agreement incorporates all the exhibits and sets forth the entire agreement of the Parties with respect to the subject matter hereof. This Settlement Agreement, exclusive of Exhibits 5.8.A, 5.8.B., and 5.8.C, may be amended only by written agreement executed by the Parties. The agreements in Exhibits 5.8.A, 5.8.B, and 5.8.C may be amended by the written agreement of the parties to those agreements.



## ARTICLE 11 – WAIVERS

11.1 Parties Waiver. The waiver and release described in this paragraph shall be in the form set out in Exhibit 11.1. Except as provided in paragraph 11.5, the State Parties (which, for the purpose of this paragraph 11.1 and paragraph 11.5, are defined as the State of Arizona, acting solely in its proprietary capacity, and all other parties to the Settlement Agreement, except the Zuni Indian Tribe and the United States) shall execute a waiver and release for claims against the Zuni Tribe and the United States for:

- A. Any and all past and present claims for injuries to their water rights or water quality (including water rights in groundwater, surface water, and effluent) accruing from time immemorial through the Enforcement Date that the State Parties may have against the Tribe or against the United States, under the laws of the United States, the State of Arizona, or otherwise, caused by diversions of surface water in the Eastern LCR basin or withdrawals of groundwater on Zuni Lands.
- B. Future claims for injuries to water quality accruing after the Enforcement Date on any lands within the Eastern LCR basin caused by the following actions on Zuni Lands:
  - (1) the lawful diversion or use of surface water; or
  - (2) the lawful withdrawal or use of underground water; or
  - (3) the Parties' performance of their obligations under this Settlement Agreement; or
  - (4) discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures; or
  - (5) discharge of oil associated with routine start-up and operation of well pumps; or
  - (6) any combination thereof.

11.2 Waiver of Claims by the Zuni Tribe and the United States. The waiver and release described in this paragraph shall be in the form set out in Exhibit 11.2. Except as provided in paragraph 11.4, the Zuni Tribe and the United States shall execute a waiver and release for claims against the state, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for any and all:

- A. Past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the Enforcement Date and any time thereafter, except for claims within the Zuni Protection Area as provided in Article 5;
- B. Past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and including claims for damages for deprivation of water rights and any claims for changes to underground water table levels) for Zuni Lands from time immemorial through the Enforcement Date;

- C. Past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and including any claims for damages for deprivation of water rights and any claims for changes to underground water table levels) from time immemorial through the Enforcement Date and any time thereafter, for lands outside of Zuni Lands but located within the LCR basin, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;
- D. Past and present claims for injuries to water quality accruing from time immemorial through the Enforcement Date for lands within the LCR basin; and
- E. Future claims for injuries to water quality accruing after the Enforcement Date on any lands within the Eastern LCR basin caused by
  - (1) the lawful diversion or use of surface water; or
  - (2) the lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in Article 5; or
  - (3) the Parties' performance of their obligations under this Settlement Agreement; or
  - (4) discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures; or
  - (5) discharge of oil associated with routine start-up and operation of well pumps; or
  - (6) any combination thereof.

11.3 Waiver of Claims by the Zuni Tribe against the United States. The waiver and release described in this paragraph 11.3 shall be in the form set out in Exhibit 11.3. Except as provided in paragraph 11.4 and 11.6, the Zuni Tribe shall execute a waiver and release for claims against the United States, including any agencies, officials, or employees thereof, for any and all:

- A. Past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands, from time immemorial through the Enforcement Date and any time thereafter;
- B. Past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) for Zuni Lands from time immemorial through the Enforcement Date;
- C. Past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) from time immemorial through the Enforcement Date and any time thereafter, for lands outside of Zuni Lands but located within the LCR basin, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors; and

- D. Past and present claims for failure to protect, acquire, or develop water rights, or failure to protect water quality of the Zuni Tribe within the LCR basin in Arizona from time immemorial through the Enforcement Date.

11.4 Retention of Claims by Zuni Tribe and the United States. Notwithstanding the waivers and releases described in paragraphs 11.2 and 11.3, the Zuni Tribe and the United States shall retain the right to assert the following claims:

- A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement or in the Act, including claims for future injuries to such rights; or
- B. Except as provided in subparagraph 11.2.C, claims for water rights, including injuries to those water rights, for lands acquired after the Enforcement Date, subject to the terms of this Settlement Agreement, including but not limited to, subparagraph 4.2.D and paragraph 5.6; or
- C. Claims for groundwater rights and injuries to surface water, groundwater and water quality, as provided in Article 5; or
- D. Claims for future injuries to water quality, as described below:
  - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraph 11.2 E; or
  - (2) Except as provided in subparagraphs 11.2.E(4) and (5), claims for injuries to water quality accruing after the Enforcement Date against any person or entity that is responsible for initially disposing of or initially releasing a Hazardous Substance or oil, even if the migration of that Hazardous Substance or oil to lands owned by or for the Zuni Tribe is caused by that person's or entity's lawful diversion of surface water or lawful withdrawal of underground water; or
  - (3) Notwithstanding subparagraph 11.2.E, claims accruing at least 30 years after the Enforcement Date under CERCLA for injuries to water quality caused by release of a Hazardous Substance; or
  - (4) Notwithstanding subparagraph 11.2.E., claims accruing at least 30 years after the Enforcement Date under the Oil Pollution Act for injuries to water quality caused by the discharge of oil, except for claims for injuries caused by the discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures and the discharge of oil associated with routine start up and operation of well pumps; or
  - (5) Notwithstanding subparagraph 11.2.E, claims accruing at least 30 years after the Enforcement Date under Subtitle I of RCRA for

injuries to water quality caused by the discharge of petroleum from underground storage tanks.

11.5 Notwithstanding the waivers and releases described in paragraph 11.1, the State Parties shall retain the right to assert the following claims against the Zuni Tribe and the United States:

- A. Claims for breach or enforcement of the terms of this Settlement Agreement or of rights recognized in this Settlement Agreement or in the Act, including claims for future injuries to such rights; or
- B. Claims for water rights, including injuries to those water rights, subject to the terms of this Settlement Agreement, including but not limited to, subparagraphs 4.2.A and 4.6.A; or
- C. Claims for future injuries to water quality, as described below:
  - (1) Claims accruing after the Enforcement Date for injuries to water quality that are not waived in subparagraph 11.1 B; or
  - (2) Except as provided in subparagraphs 11.1.B(4) and (5), claims for injuries to water quality accruing after the Enforcement Date against the Tribe or the United States if the Tribe or the United States is responsible for initially disposing of or initially releasing a Hazardous Substance or oil, even if the migration of that Hazardous Substance or oil is caused by the Tribe's or the United States' lawful diversion of surface water or lawful withdrawal of underground water.
  - (3) Notwithstanding subparagraph 11.1.B, claims accruing at least 30 years after the Enforcement Date under CERCLA for injuries to water quality caused by release of a Hazardous Substance; or
  - (4) Notwithstanding subparagraph 11.1.B., claims accruing at least 30 years after the Enforcement Date under the Oil Pollution Act for injuries to water quality caused by the discharge of oil, except for claims for injuries caused by the discharge of oil associated with routine physical or mechanical maintenance of wells or diversions structures and the discharge of oil associated with routine start up and operation of well pumps; or
  - (5) Notwithstanding subparagraph 11.1.B, claims accruing at least 30 years after the Enforcement Date under Subtitle I of RCRA for injuries to water quality caused by the discharge of petroleum from underground storage tanks.
- D. Nothing in this waiver and release of claims affects the State Parties' ability to make any claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water, and effluent) against

any other Indian tribe, band, or community or against the United States on behalf of any such tribe, band, or community.

11.6 Other Federal Claims. Nothing in this Settlement Agreement shall be construed to affect the water right claims or entitlements to water for federal lands of federal agencies, or of any Indian tribe, band or community, other than Zuni Tribe. Furthermore, nothing in this Settlement Agreement waives the ability of any such federal agency, Indian tribe, band or community, or the United States on their behalf, to enforce or otherwise protect those water right claims or entitlements to the extent permitted by law. The Zuni Tribe and the United States retain all claims of water rights or injuries to water rights or water quality (including water rights in groundwater, surface water, and effluent) against any other Indian tribe, band or community or against the United States on behalf of any such tribe, band or community.

11.7 Environmental Regulation. Nothing in this Settlement Agreement shall be construed to affect any right of the United States or of the State of Arizona to take any actions, including enforcement actions, under any statutes, regulations, or any other applicable laws relating to water quality or the environment, even where such actions incidentally benefit the Zuni Tribe. For purposes of this paragraph, the United States means any federal department, agency or component thereof, acting in its sovereign capacities, except when acting solely on behalf of the Zuni Tribe.

11.8 Claim Accrual. For purposes of this Article 11, a claim or cause of action accrues when any party knows or reasonably should know that it has been damaged, unless another statutory standard applies.

11.9 Judgment and Decree. The Parties to this Settlement Agreement shall file a Judgment and Decree in the LCR Adjudication in the form of Exhibit 11.9. The United States and the Zuni Tribe shall be permitted to support any claim of any party to this Settlement Agreement filed in the LCR Adjudication from which the Zuni Tribe's water rights under this Settlement Agreement are derived.

11.10 Interpretation. Nothing in the waiver and release shall prevent the Zuni Tribe or the United States from participating with other entities in further activities to augment the water supply available to the LCR basin.

11.11 Tribal Member Entitlements. Any entitlement to water (including groundwater, surface water and effluent) of any individual member of the Zuni Tribe for Zuni Lands shall be satisfied out of the water resources provided to the Zuni Tribe in this Settlement Agreement.

## ARTICLE 12 – NOTICE AND SIGNATURES

12.1 Notices. Any notice or other communication given under this Settlement Agreement must be in writing and delivered by overnight courier service or certified mail, return receipt requested, postage prepaid and properly addressed to the Parties at the addresses listed below (or to any other or further addresses the Parties may subsequently designate by notice in this manner). All these notices and communication shall be effective when delivery to the required recipient is completed in accordance with this paragraph:

To the United States of America:

Asst. Secretary for Indian Affairs  
U.S. Department of the Interior  
1849 C St. NW 4104 MIB  
Washington, DC 20240-0001

Chief  
U.S. Dept. of Justice  
Indian Resources Section  
P.O. Box 44378  
L'Enfant Plaza Station  
Washington, DC 20026-4378

cc:

Regional Director  
Bureau of Indian Affairs  
P.O. Box 26567  
Albuquerque, NM 87125-6567

To the Zuni Tribe:

Office of the Governor  
Zuni Indian Tribe  
P.O. Box 339  
Zuni, NM 87327-0339

To the State of Arizona

Office of the Governor  
1700 W. Washington  
Phoenix, AZ 85007

Office of the Attorney General  
Attn: Water Rts. Adjudication Team  
1275 W. Washington  
Phoenix, AZ 85007

Director  
Department of Water Resources  
500 North Third St.  
Phoenix, AZ 85004

To Arizona Game and Fish Commission:

Director  
Arizona Game and Fish Commission

	2221 W. Greenway Phoenix, AZ 85023
To Arizona State Land Department:	State Land Commissioner Arizona State Land Department 1616 W. Adams Phoenix, AZ 85007
To the Arizona State Parks Board:	Executive Director Arizona State Parks Board 1300 West Washington Phoenix, Arizona 85007
To St. Johns Irrigation and Ditch Co.:	St. Johns Irrigation and Ditch Co. P.O. Box 38 St. Johns, AZ 85936
To Lyman Water Co.:	Lyman Water Company President P.O. Box 397 St. Johns, AZ 85936
	Lyman Water Company Secretary P.O. Box 521 St. Johns, AZ 85936
cc:	David A. Brown Brown & Brown Law Offices, P.C. 1546 E. White Mountain Blvd. P.O. Box 3128 Pinetop, AZ 85935
To Round Valley Water Users' Association:	Round Valley Water Users' Assn. President P.O. Box 69 Eagar, AZ 85925
cc:	David A. Brown Brown & Brown Law Offices, P.C. 1546 E. White Mountain Blvd. P.O. Box 3128 Pinetop, AZ 85935
To Salt River Project Agricultural Improvement and Power District:	General Manager Salt River Project Agricultural Improvement and Power District

P.O. Box 52025  
Phoenix, AZ 85072-2025

To Tucson Electric Power Company: Corporate Secretary  
Tucson Electric Power Company:  
P.O. Box 711  
Tucson, AZ 85702

To the City of St. Johns: City of St. Johns  
P.O. Box 455  
St. Johns, AZ 85936

To the Town of Eagar: Town of Eagar  
P.O. Box 1300  
Eagar, AZ 85925

cc: David A. Brown  
Brown & Brown Law Offices, P.C.  
1546 E. White Mountain Blvd.  
P.O. Box 3128  
Pinetop, AZ 85935

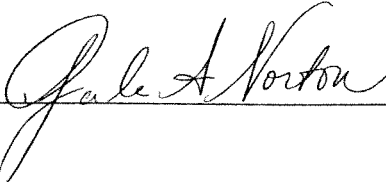
To the Town of Springerville: Town of Springerville  
P.O. Box 390  
Springerville, AZ 85938

cc: David A. Brown  
Brown & Brown Law Offices, P.C.  
1546 E. White Mountain Blvd.  
P.O. Box 3128  
Pinetop, AZ 85935

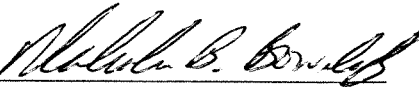


IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement dated as of the day and year written above.

THE UNITED STATES OF AMERICA

By: 


THE ZUNI INDIAN TRIBE

By: 

THE STATE OF ARIZONA

By: 

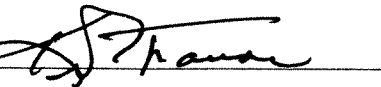
THE ARIZONA GAME AND FISH COMMISSION

By: 

THE ARIZONA STATE LAND DEPARTMENT

By: 

THE ARIZONA STATE PARKS BOARD

By: 

ST. JOHNS IRRIGATION & DITCH COMPANY

By: 

LYMAN WATER COMPANY

By: Jim Hauer

ROUND VALLEY WATER USERS'  
ASSOCIATION

By: Richard A. Wall

SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT

By: William C. Schader

TUCSON ELECTRIC POWER COMPANY

By: W. A. Delwood

CITY OF ST. JOHNS

By: Harold Peterson

TOWN OF EAGAR

By: Louise L. Lusk

TOWN OF SPRINGVILLE

By: Ray Dorn

**ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT  
AGREEMENT IN THE LITTLE COLORADO RIVER BASIN  
EXHIBITS**

Exhibit 2.1 .....	Legislation
Exhibit 2.10.....	Eastern LCR Basin (Norviel Decree Area)
Exhibit 2.48.....	Zuni Protection Area/Zuni Pumping Lands
Exhibit 4.1A(1) <i>et seq.</i> .....	Zuni Abstracts
Exhibit 4.1.C(1) <i>et seq.</i> .....	LWC and SJIC Abstracts
Exhibit 4.1.D(2) .....	Local Landowner Letters
Exhibit 4.6.B .....	Zuni Abstract for unappropriated flows
Exhibit 4.7 .....	AGAF Monitoring Plan
Exhibit 5.7.B .....	Pumping Protection Agreement (Form)
Exhibit 5.8.A .....	SRP Agreement
Exhibit 5.8.B .....	TEP Agreement
Exhibit 5.8.C .....	ASLD Agreement
Exhibit 6.1.A .....	Proposed Trust Lands
Exhibit 11.1 .....	Waiver by Parties
Exhibit 11.2.....	Waiver by Zuni Tribe and U.S.
Exhibit 11.3.....	Waiver by Zuni Tribe against U.S.
Exhibit 11.9.....	Judgment and Decree